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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,114

10/24/2003

Harry Edwards Betsill

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EXAMINER

SIEFKE, SAMUEL P

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

04/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/693,114	Applicant(s) BETSILL, HARRY EDWARDS	
	Examiner SAM P. SIEFKE	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 16-22, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6, 16-22, 25 and 26 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 5, 6, 16-22, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gammenthaler (USPN 6,026,674).

Gammenthaler teaches a breath alcohol detector that comprises a breath induction tube 12 which inherently includes an inlet port (fig. 1), a pressure sensor 16 connected to the induction tube 12 for measuring the pressure in the breath flow channel 34, a fuel cell 24, a vent passageway 26 communicating with the induction tube 12 which exhaust to the atmosphere, a two position valve 20 having a valve inlet in communication with the breath induction tube 12 (fig 1, view of reference of 20 with induction tube 12), a first outlet (when valve is closed the sample passes by the valve inlet to outlet 26, a second outlet (outlet after passing through fuel cell), a valve controller 22 for shift the valve from a first position where the valve connects the valve inlet to the first valve outlet, and a second position where the valve connects the valve inlet to the second valve outlet. The passageway 26 is structurally capable when the valve is in the closed position to be a first passageway communicating with the first valve outlet to the atmosphere because all the air will pass there through and as seen in figure 1. The Examiner maintains that the first restriction is the passageway would be the entrance to the inlet valve tube. Gammenthaler disclose the valve controller 22 being a solenoid electrically connected to a computing device 18 which controls the entire operation of the device (col. 3, lines 5-22). Regarding claim 2, the first restriction (connector to valve inlet from breath induction tube 12) is smaller than the vent passage 26. Regarding claim 5 and 16, the detector is enclosed in a body to keep the detector compact and capable of being employed as an interlocking mechanism in cars (col. 5,

lines 12-20). Further, the pressure sensor is attached to a pressure sensor passageway that extends from the breath inlet passageway (fig. 1, ref. 14). Regarding claim 22, the pressure sensor, temperature sensor and control valve are all hooked to the computing device by electrical leads as seen in figure 1.

Gammenthaler does not teach a two flow position valve, a cover for covering the vent recess and vent opening, a third passage that extends from the fuel cell to the surface of the body, the body is made of plastic.

While Gammenthaler teaches a valve that provides a testing gas to the fuel cell under pressure it would have been obvious to one having an ordinary skill in the art at the time of the invention to modify Gammenthaler outlet 26 so that it is placed after the valve 20 thereby passing all the gas through the valve to either the outlet 26 or to the fuel cell for testing. This would provide the fuel cell all the sample gas in order to test the sample for the alcohol content provided at the proper pressure for testing.

Regarding the vents, it would have been obvious to one having an ordinary skill in the art to modify Gammenthaler to employ covers for the vents. This would reduce the likely hood of interference of outside gases or contaminants while the detector is not being used. Regarding a third vent opening, it would have been obvious to one having an ordinary skill in the art at the time of the invention to vent the breath from the fuel cell away from the vent passages so that the exhaust breath would not interfere with the exhausting breath pressure which would increase the pressure sensed by the pressure sensor. Regarding the body being made of plastic, it would have been obvious to one having an ordinary skill in the art to modify Gammenthaler to employ plastic as the

material used for the body because plastic is a cheap, light and durable material that is routinely employed in these types of detectors. Regarding claim 25 and 26, Gammenthaler teaches a valve controller to operate the opening and closing of the valve 20. It would have been obvious to one having an ordinary skill in the art to modify Gammenthaler to open the valve in less than .25 seconds because when the proper measuring pressure in the inlet is detected the fuel cell needs to have access to the air flow immediately in order to provide proper testing at a specified pressure.

Allowable Subject Matter

Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-6, 16-22, 25 and 26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAM P. SIEFKE whose telephone number is (571)272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Samuel P Siefke/
Primary Examiner, Art Unit 1797

April 10, 2008